IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24-04-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

Crl.A.No. 1213 of 2000 and Crl.M.P.No.1 of 2007

T.R.Periasamy ..Appellant/accused

-vs-

State rep.by the
Inspector of Police,
Vigilance and Anti Corruption
Special Cell, Salem
Cr.No.3/AC/89/Special .. Respondent/Complainant

This appeal is filed under Section 374 of Cr.P.C. as against the Judgment dated passed in C.C.No.222 of 1989 on the file of Special Judge and I Additional District Judge -cum-Chief Judicial Magistrate,Salem, dated 24.11.2000.

For appellant : :Mr. T.P.Manoharan

For respondent : :Mr.V.R.Balasubramaniam
Additional Public Prosecutor

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.222 of 1989 on the file of the Special Judge and I Additional District Judge-cum Chief Judicial Magistrate,Salem.

2. The short facts of the prosecution case is that the accused, the Village Administrative Officer in Karadiapatty Village in Namakkal Taluk a public servant had demanded Rs.125/-towards illegal gratification from one Shanmugam on 21.8.1989. In pursuance of the demand made by him on 18.8.1989 at about 11.00 a.m at his office at Kolathupalayam thereby committing an offence under Section 7 of Prevention of Corruption Act 1988 .

3. The case was taken on file by the learned Special Judge cum Chief Judicial Magistrate, Salem as S.C.C.No.222 of 1989 and on appearance of the accusd copies under Section 207 Cr.P.C. were furnished to the accused

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and a charge under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988 was framed and when questioned the accused pleaded not guilty.

4. it is pertinent to note at this juncture that the trial Judge has framed two charges one on 15.12.1989 under Section 7 of the Prevention of Corruption Act and another charge dated 1.8.1996 under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act 1988.

5. Before the trial Court, on the side of the prosecution, P.Ws 1 to 9 were examined . Exs P1 to P23 were exhibited and , M.Os 1 to 11 were marked.

6. P.W.1 is the resident of Kolathupalayam. The complaint Ex P4 was preferred by P.W.1 to P.W.9 on the ground that he owns 8 acres 43 cents of lands and the patta for 96 cents stood in his name and patta for 5 acres 94 cents stood in his father's name and another patta No.38 for 1 acre and 53 cents also stood in the name of his father and that he was cultivating the entire extent of land . According to him, he is a member of the Co-operative Society wherein he had obtained loan to the tune of Rs.4,050/- which he had discharged on 26.7.1989 at 12.00 noon and to get more loan for the purpose of raising sago plants , he approached the Secretary of the said Society Thiru Ponnusamy.Ex P1 is the application filed by him for the said loan. For the sanction of the loan, the Secretary had advised him to get solvency certificate from the Village Administrative Officer. Accordingly he went to the Kolathupalayam on 27.7.1989 at about 11.00 a.m., for the purpose of meeting the Village Administrative Officer at his office. P.W.1 would identify the accused as the Village Administrative Officer of Kolathupalayam Village and after handing over the forms given by the Secretary of the said Society Thiru Ponnusamy, he requested the Village Administrative Officer to furnish the solvency certificate. The Village Administrative Officer has instructed him that unless and until the patta standing in the name of the father is transferred in his(P.W.1) name, he cannot furnish the solvency certificate in favour of him. The Village Administrative Officer has also advised him (P.W.1) to register the death of his father with the Tahsildar since he (P.W.1) has not registered the death of his father early before the Village Administrative Officer. Accordingly on 3.8.1989, he went to the Namakkal Taluk Office and presented the application before the Tahsildar requesting him to register the death of his father under Ex P2. On 8.5.1989 the revenue Inspector visited his village and made an enquiry about the death of his father with the villagers and also enquired him (P.W.1) and recorded his statement under Ex P3. On 18.8.1989 he went to the office of the Village Administrative Officer at 11.00 a.m and took along with him P.W.3 who had signed in Ex P1 loan application as a guarantor. The Village Administrative Office's office, he saw P.W.5 a Village menial and others. When he informed about the purpose of his visit to P.W.5, the Village menial, allowed him to go inside the Village Administrative Office where he met the accused/Village Administrative

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Officer, Periyasamy herein and requested him to furnish solvency certificate. The accused informed him that the order for transfer of patta had reached his hands and if he(P.W.1) pays Rs.125/- as an illegal gratification, he will furnish the certificate as required by him. Even though he(P.W.1) explained to the Village Administrative Officer about his financial difficulties, the accused/Village Administrative Officer insisted that for the issuance of insolvency certificate, he(P.W.1) should pay Rs.125/- by way of bribe. The Village Administrative Officer has asked him to meet on 21.8.1989 with the amount demanded by him since he is not inclined to offer bribe for the purpose of getting solvency certificate, he went to the office of Vigilance and Anti Corruption, Salem on 21.8.1989 Monday at 10.00a.m and met the Deputy Superintendent of Police, Vigilance and Anti Corruption Department and filed a complaint Ex P4. The Deputy Superintendent of Police, after receiving the complaint directed the Inspector of Police to take necessary action. Accordingly, the Inspector of Police registered a case and gave a copy of the first information report Ex P5. At about 12.00 noon on the same day,P.W.2 Padmanabhan working at milk pasteurization Co-opertive Society came there and another witness by name Azhagasan of Forest Department also came to the office of Vigilance and Anti Corruption within a short while. The Inspector of Police has introduced P.W.1 to Azhagasan and P.W.2 and also appraised of the complaint given by P.W.1 and also furnished a copy of First Information Report with a request to read the same. Thereafter, the Inspector of Police asked P.W1 whether he had brought the decoy amount of Rs.125/- .P.W.1 had produced one 100 hundred rupee note, two ten rupee notes and one five rupee note. After noting the number of the currency notes and the Inspector of Police had prepared a Mahazar. M.O.1 100 rupee note bearing currency No.O.L.U.035895. M.O.2 is a ten rupee bearing currency No.84C,676351 and M.O.3is ten rupee note bearing currency note 28 R 431994 respectively.M.O.4 is the five rupee not bearing currency No.74A 507046. Thereupon, the Inspector of Police prepared a solution by dissolving a powder in a glass tumbler and asked P.W.2 Padmanabhan to count the currency notes and then asked him to dip his fingers in the said solution. Accordingly he dipped so,but there was no change found in the solution. Afterwards, the Inspector of Police strewn the powder over the currency notes and asked P.W.2 to count the same. Thereafter the Inspector of Police asked him (P.W.2)to dip his fingers in the said solution and accordingly, Padmanabhan dipped his fingers in the said solution , the said solution turned pink in colour. The Inspector of Police had collected the said Pink colour solution in a bottle and sealed the same. After explaining the importance of the said test, and also after taking samples from the powder used for preparing the solution and also powder which was strewn over the currency notes the Inspector of Police handed over the currency notes to him (P.W.1) and that he(P.W.1) had received the same and kept in his shirt pocket. The Inspector of Police has also deposed P.W.1 to come P.W.2 along with him at the time when he is going to meet the accused and also advised him that decoy money shall be handed over to the accused only on demand. The Inspector of Police further instructed him(P.W.1) that if the accused receives the amount, he

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should come out and make signal by combing his hair with fingers. The Inspector of Police has prepared mahazar Ex P6 for what had transpired in his office in which he and other witnesses have signed as witnesses. At about 1.45p.m on the same day, he along with the other witness had proceeded to Kolathupalayam in a Government jeep and stopped the jeep two furlong away from Kulathupalayam Village at about 3.00p.m. The Inspector of Police had asked P.W.2 and P.W.1 to alight from the jeep and instructed both of them to go and meet the accused. Accordingly he along with P.W.2 Padmanabhan proceeded towards the office of Village Administrative officer. The Inspector and other witnesses followed them at a distance. P.Ws 1 and 2 met the accused at 3.15p.m. and asked P.W.1 and P.W.2 to take their seats. The accused also made enquiry about Padmanabhan P.W.2. P.W.1 has introduced P.W.2 as his cousin brother belongs to Velagoundampalayam. P.W.1 asked the accused to furnish the solvency certificate. The accused ascertained whether P.W.1 had brought Rs.125/- as demanded by him. P.W.1 took out Rs.125/- from his shirt pocket and handed over the same to the accused/Village Administrative Officer who received the same and put it in the right side pant pocket and also handed over the solvency certificate to him(P.W.1) P.W.1 after receiving the said certificate ,P.W.1said that he is suffering from a lot and do not posses sufficient amount to take his meals and demanded from the accused Rs 15/- to meet his expenses of diet. The accused took out Rs.10/- note and another Rs.5/- note from Rs.125/- handed over by the accused to him and gave it to P.W.1. P.W.2 and P.W.1 thereafter came out of the room of the Village Administrative Officer/accused and signalled the Inspector as instructed. After seeing the signal at about 3.25 p.m, the Inspector of Police and other witnesses rushed to the office of the Village Administrative Officer . At that time,P.W.1 was standing near the Panchayat Union School. P.W.2 went inside the Village Administrative Officer along with the Inspector of Police. At about 4.45p.m. the Inspector called him and asked to return Rs.15/- received from the accused and also the solvency certificate issued by the accused. The Inspector of police has prepared Ex P7 Mahazar for having received Rs.15/- and the solvency certificate from P.W.1.The Inspector of Police also noted the numbers of the currency notes to the denomination of Rs 15/- received from P.W.1. M.O3 andM.O.4 are the currency note numbers. Ex P8 is the solvency certificate handed over by P.W.1. The Inspector of Police P.W9 had arrested the accused and brought to the Vigilance and Anti Corruption Department at Salem.P.W.1 would say that he has obtained required loan from the co-operative Society.

6a) P.W.2 is the trap witness. He would corroborate the evidence of P.W.1 to the effect that on 21.8.1989 he went to the Vigilance and Anti Corruption Office at Salem as per the directions of the Deputy Registrar of Milk Pasteurization department,Salem where he was working as an assistant at the relevant point of time. According to P.W.2 he met P.W.1 at the office of the Inspector of Police, Vigilance and Anti Corruption Department, Salem who was introduced to him by the Deputy Superintendent of Police, Vigilance and Anti Corruption Department. He was asked to go through the complaint Ex P1 preferred by P.W.1 and he would say that Ex P9

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Mahazar was prepared for Rs.125/- handed over by P.W.1 to the Inspector of Police as a Decoy amount ,who would depose that M.O.1 to M.O.4 are the decoy currency notes. He would further speak about the preparation of Sodium carbonate solution and about the phenolphthalein test conducted by the Inspector of Police. After conducting Phenolphthalein test over the decoy currency notes , the Inspector of police had asked him(P.W.2) to count the currency notes and then to dip his fingers in the sodium carbonate solution prepared by the Inspector police in a glass of water. When he dipped so, the colour of the solution turned pink. The Inspector of police has affixed the label over the said glass of water and marked as S1 which is M.O.5. The Inspector of Police had packed the phenolphthalein powder and sodium carbonate powder in a separate covers and marked as A and B respectively which are M.O.6 and M.O.7. Thereafter, the Inspector of Police handed over the currency notes strewn with Naphthalene powder to P.W.2 and instructed him (P.W.2) to hand over the decoy amount to the accused on demand. Ex P6 mahazar was prepared for the things which had transpired between 12.00noon and 1.30p.m. In the office of the Vigilance and Anti Corruption,Salem. Both P.W.1 and P.W.2 and another witness have signed in Ex P6 Mahazar. The Inspector of Police had taken P.W.1 and P.W.2 and other witness in the office jeep at about 1.45p.m., to Koluthupalayam. Before reaching Kuluthupalayam, both P.W.1 and P.W.2 have alighted from the jeep as instructed by the Inspector of Police(P.W.9) and asked P.W.1 and P.W.2 to go to the Village Administrative Office and to take surveillance there. P.W.1 and P.W.2 proceeded to the Village Administrative Office and they were followed by the Inspector of Police (P.W.9) and other witness. At about 3.15 p.m., both P.W1 and P.W.2 reached the Village Administrative Office and met the Village Administrative Officer,Periyasamy/accused herein. The accused enquired about him(P.W.2) with P.W1. P.W.1 had introduced P.W.1 as his cousin came down all the way from Velagoundampatti and requested the Village Administrative Officer / accused to issue solvency certificate. Immediately, the accused asked P.W.1 whether he had brought Rs.125/- as demanded by him .P.W.1 answered in the affirmative and took out Rs.125/- from his shirt pocket and handed over the same to the accused . The accused,after counting the currency notes has put it in his right side pant pocket and has also furnished the solvency certificate as required by P.w.1. Thereupon P.W.1 had asked the accused to give Rs.15/- to him to meet his diet expenses. The accused took out ten rupee note and five rupee note from his pant pocket and handed over the same to P.W.1 P.W.1 and P.W.2 came out of the Village Administrative Office and as instructed by the Inspector of Police,P.W.1 signalled the Inspector of Police by combing his hairs with fingers. Immediately, the Inspector of Police entered into the Village Administrative Office with his party. He (P.W.2) also accompanied the Inspector of Police. But P.W.1 Shanmugam was standing outside .After entering into the office of Village Administrative Officer, the Inspector of Police had introduced him (P.W.2) and other witness to the accused and prepared sodium carbonate solution in two glass tumblers and asked the accused to dip his right hand finger and left hand finger separately in the said solution. When the accused dipped so, both the solutions turned

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pink in colour. The Inspector of Police had collected those solution into two separate bottles and affixed his seal and marked as S2 and S3 which are M.O.8 and M.O.9 respectively. After giving lungi the Inspector of Police seized the pant from the accused which contain ill-gotten money . When the Inspector enquired the accused about the bribe amount received from P.W.1, the accused took out Rs.110/- from his right front side of the pant pocket and produced and also informed the Inspector of Police ,P.W.1 got back Rs.15/- from the amount paid to him(accused). The Inspector of Police has prepared another sodium carbonate solution in a glass tumbler and dipped the right side of the pant pocket of the accused . The said solution also turned pink in colour. The Inspector of Police collected the said solution in a separate bottle and marked as S4 which is M.O.10. The seized pant of the accused is M.O.11. The currency note numbers in 100 rupee note and ten rupee note produced by the accused were compared with the currency note numbers noted in the mahazar and both numbers were found to be tallied. They are M.o.1 and M.O.2 respectively. Thereafter, P.W.1 who was standing outside the office, was sent for and the Inspector of Police asked the accused whether he had received back Rs.15/- from out of the bribe amount given to the accused by him. P.W.1 also admitted the same and produced Rs.15/- from his person. The currency note numbers in the ten rupee note and five rupee note produced by P.W.1 were compared with the currency note numbering in the mahazar are found tallied M.O.3 and M.O.4 are the currency notes, Both ten rupee note and five rupee note produced by P.W.1 were seized by the Inspector of Police along with the solvency certificate produced by P.W.1.Ex P8 is the solvency certificate produced by P.W.1 which was issued by the accused. The Inspector of Police has also perused the chitta book and the receipt book fine register maintained by the accused in his office and also signed in them. The witnesses have also signed along with the Inspector of Police over the said documents. Ex P10 is the fine register. ExP11 is the land tax demand register. Ex P12 is the copy of the Chitta extract in which the witnesses have signed. The Inspector of Police have arrested the accused at 4.45p.m and also prepared mahazar Ex P7 for what had transpired in the Village Administrative Office between 3.30p.m. and 5.00p.m . The copy of the Mahazar was also furnished to the accused under acknowledgement. Ex P13 is the rough sketch prepared by the Inspector of Police in which he(P.W.2) and P.W.1 have signed. Ex P14 is the form 10A seized from the office of the accused in which also he(P.W.2) and P.W1 have signed. Thereafter, the accused along with the witness, the Inspector of Police came to the Vigilance and Anti Corruption Office,Salem.

6b) P.W.3 is the relative of P.W1. On 26.7.1989 he accompanied P.W.1 to the Cooperative Society at Kolathupalayam for the purpose of raising a loan for P.W.1. P.W1 has discharged the existing loan to the tune of Rs.4050/- and presented Ex P1 fresh loan application before the Secretary of the society Ponnusamy in which he has also singed as a guarantor. On 18.8.1989 at about 11.00a.m., he went to the fair price shop at Kolathupalayam in order to purchase wheat where he met P.W1 who informed him that he came there to get solvency certificate from the Village

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Administrative Officer. Both P.W.1 and P.W.3 went to the Village Administrative Office and went inside the office where the Village Administrative Officer/accused was present .The Village Administrative Officer /accused had informed P.W.1 that he has received an order for effecting mutation in respect of the land in his favour and that for furnishing a solvency certificate , the accused had demanded Rs.125/- to P.W.1.P.W.1 had pleaded before the accused his in ability to raise Rs.125/- but the accused was very firm in his demand of Rs.125/- for furnishing the solvency certificate. The accused has informed P.W.1 to come to his office on 21.8.1989 with Rs.125 for the purpose of getting solvency certificate. At that time except P.W.1 and P.W.3 no one else was present in the Village Administrative Office.

6c)P.W.4 deposes about the procedure followed in the sanction of loan in the Cooperative Society. He would depose that on 26.7.1989,P.w.1 came to his office along with P.W.3 and re paid Rs.4050/- towards the existing debt. Along with P.W.1, P.W.3 has also signed in the loan application as a guarantor. Ex P8 form for getting solvency certificate was furnished to P.W.1 from his office. On 25.8.1989 he was examined by the Inspector of Police Vigilance and Anti Corruption Department, Salem to whom he has informed that for want of solvency certificate, Cooperative Society has not sanctioned the loan in favour of P.W.1. He has also admitted before the Inspector of Police that Ex P8 form belongs to Cooperative Society. The Inspector of Police has instructed him(P.W.4) to furnish the xerox copy of Ex P8 form and to take further action for sanctioning the loan in favour of P.W.1 and accordingly the loan was sanctioned to P.W.1 and subsequently on 13.9.1989 P.W.4 was examined by the Inspector of Police. He would depose that as per Ex P8 a sum of Rs. 4560/- was sanctioned towards crop loan for P.W.1.

6d)P.W.5 Ramachandran is the Village Administrative Assistant (Thalaiyari). He would depose that along with him Vijayakumar, Natarajan, Punjolai are also working as village assistants and that he knows P.W.1 and P.W.3. He would depose to the fact that on 18.8.1989 both P.W.1 and P.W.3 came to the Village Administrative Office, Kolathupalayam and met the accused who was the Village Administrative Officer at the relevant point of time. On enquiry,P.W.1 had revealed that he came to get his certificate to raise agricultural loan.

6e) P.W.6 is the then Deputy Tahsildar of Namakkal who would depose that the accused Periyasamy was the Village Administrative Officer of Karadipatti during the period from 28.12.1988 to 22.8.1989. Ex P14 is the 10A form relating to the legal heir statement. In the said form the legal heirs of one Karupanna gounder had prayed for mutation of their name in the patta on the ground that the said Karupannagounder died on 2.2.1989.Accordingly on 17.8.1989 he had passed an order for effecting mutation under Ex P14. Ex P10 is the fine register maintained by the Village Administrative Officer of Karadipatti. Jamabandhi was conducted by the District Collector on 27.4.1989 as per ExP10. Subsequent to the said

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date of Jamabandhi no tax was collected. Ex P11 is the land tax register maintained by the Village Administrative Officer.Ex P15 is also another tax collection register. As per entries in the said registers(Ex P11 and Ex P15) there was no tax was collected on 21.8.1989. As per Ex P10, there was no tax was collected from the villagers of Karadipatti. Ex P12 is the copy of the chitta which contains the immovable property particulars of Karupanna Gounder. Even though an order was passed on 17.8.1989 for effecting mutation, no change was made in the chitta book till 21.8.1989. Ex P2 is the application given by P.W.1 with the request to register the death of his father in the birth and death register. As per the application made by P.W.1 under Ex P2, the Revenue Inspector has conducted an enquiry and Ex P6 order was passed on 26.8.1989 for the purpose of recording the death of Karupannagounder which contain his initial. Ex P17 is the office copy of Ex P14. He has also handed over Ex P12 and Ex P16 to the Inspector of Police. Ex P18 is the copy of the chitta sent along with the application for mutation of names in the patta by the accused.

6f) P.W.7 Gopal is the head clerk of the Chief Judicial Magistrate's Court Salem during 1989. As per requisition Ex P19, made by the Inspector of Police on 22.8.1989, he had forwarded the material objects connected with this case to the Forensic Science Laboratory, Chennai for chemical examination. Ex P.20 is the letter of requisition addressed to the Director of Forensic Science Laboratory, Chennai by the Chief Judicial Magistrate, Salem. Ex P21 is the report received from the Forensic Science Laboratory, Chennai.

6g)P.W.8 is the then Revenue Divisional Officer of Namakkal Division. He would depose that during the relevant period, the accused was working as the Village Administrative Officer of Karadipatti village and that he has been empowered to appoint or dismiss the Village Administrative Officers. He had received a letter from the Vigilance and Anti Corruption Department, seeking permission to initiate criminal proceedings against the accused and after going through the entire records relating to the accused, produced by the Vigilance and Anti Corruption Department and after getting himself satisfied to the existence of the prima facie case against the accused, he accorded sanction under Ex P22 on 13.10.1989.

6h) P.W.9 is the Investigating Officer in this case. As per the directions of the Deputy Superintendent of Police, Vigilance and Anti Corruption Department, Salem he has registered a case under Crime No.3/AC/89/Special under Section 7 of the Prevention of Corruption Act. On the basis of the complaint Ex P1 was preferred by P.W.1. Ex P23 is the copy of First Information Report. Ex P5 is the acknowledgement for having furnished the copy of Ex P23 to P.W.1. He had sent the copy of First Information Report to the concerned officials including the Court . After securing the witness from the milk pasteurization department, Salem and also from the Forest Department, and on their presence, he has introduced P.W.1 to them and also appraised the complaint preferred by him under Ex

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P1 and prepared Mahazar Ex P9 for the decoy currency notes to the value of Rs.125/- in the denomination of one 100 rupee note, two ten rupee notes and one five rupee note and after conducting phenolphthalein test and sodium carbonate test had asked P.W.2 Padmanabhan to dip his fingers , after spreading phenolphthalein powder over the currency notes, counted by him, the solution turned pink in colour. After explaining the importance of the phenolphthalein test to P.W.1 and P.W.2, he collected the pink colour solution in which P.W.2 has dipped his finger in a separate glass tumblers and sealed the same and marked as S1 which is M.O.5. After separately packing the phenolphthalein powder and sodium carbonate powder and marked as A and B respectively which are M.O.6 and M.O.7. The decoy amount of Rs.125/- was returned to P.W.1 and instructed him to meet the accused in his office at Kolathupalayam and further instructed that on demand, he has to hand over decoy amount to him and after the receipt of the amount by the accused, he should came out of the office and signal to him by combing his hair with fingers,after the receipt of the said amount of Rs.125/- by the accused. P.W.1 and P.W.2 went along with the Inspector of Police (P.W.9) before that he has prepared mahazar for what had transpired in his office. Ex P2 is the mahazar in which the witness and the Inspector of Police and Deputy Superintendent of Police have signed . ExP6 is the said mahazar. Thereafter he proceeded along with P.W.1 and P.W.2 and other witnesses in a jeep to Kolathupalayam and stopped the jeep at about 3.00p.m about two furlongs away from Kolathupalayam and instructed P.W.1 and P.W.2 to go and meet the accused at his office and he was making surveillance along with the other witnesses at a distance from the Village Administrative Office. At about 3.25p.m., both P.W.1 and P.W.2 came out of the Village Administrative Office and P.W.1 gave signal as instructed by him . Immediately he along with the other witnesses went inside the office of the Village Administrator at about 3.30p.m.,. After introducing himself and the other witnesses to the accused, after ascertaining from P.W.1 that the accused had received the bribe amount , he had prepared Sodium carbonate solution in two separate glass tumblers and asked the accused Periyasamy to dip his fingers separately in the said solution. When the accused dipped so, the solution turned pink in Colour. The solution in both the bottles have been collected and sealed which M.O.8 and M.O.9 respectively. When the P.W9 enquired about the receipt of the bribe amount, the accused after admitting that he had received Rs.125/- on the representation made by P.W1 that he requires Rs.15/- to meet the expenses of his diet, he gave back Rs.15/- to P.W.1 out of Rs.125/- received from him and kept his balance of Rs.110/- in the right side of the pant pocket. The accused produced one 100 rupee note, one ten rupee note from his right side of the pant pocket. P.w.9 has prepared a mahazar M.O.1 and M.O.2 are 100 rupee note and ten rupee note respectively . The Inspector of Police has also seized the pant from the accused after giving alternate dress and prepared another sodium carbonate solution in a bottle and marked as S4 which is M.O.10. When the right side of the pant pocket was dipped in the said solution colour of the solution turned into pink. M.O.11 is the said pant of the accused. He has also perused the chitta

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maintained by the accused and also perused Ex P14 ten years statement and has signed in those documents along with the witnesses. He has seized Ex P11 revenue receipt book and Ex P10 fine register and at 4.45p.m he sent for P.W.1 who was standing outside the office of the accused and asked him to hand over Rs.15/- received back from the accused and also to produce solvency certificate issued by the accused. P.W.1 has produced Rs 15/- as well as the solvency certificate issued by the accused as requested by P.W.9. M.O.3 and M.O.4 are the currency notes of the denomination of Rs.10 and Rs 5 respectively produced by P.W.1 to .W.9. M.O.8 is the solvency certificate issued by the accused . Thereafter the accused was arrested by him(P.W.9) at 4.45p.m. and prepared ExP7 mahazar in which P.W1 and P.W.2 and other witnesses have signed. After furnishing the copy of the mahazar to the accused, he has prepared a rough sketch Ex P13 in the presence of the witnesses. He has also examined the witnesses and recorded their statements. He has brought the accused to the police station and released him on bail. The material objects seized by him were sent to the Court on 23.8.1989. He has also made a requisition to the Judicial Magistrate to send the material objects connected with this case to the Forensic Science Laboratory for subjecting them to the chemical examination. Ex P17 is the copy of Ex P14. After obtaining Ex P22 order of sanction for prosecution and after completing formalities had filed a charge sheet against the accused on 25.11.1989 under Section 7 and under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act .

7. When incriminating circumstances were put to the accused under Section 313 Cr.P.C., he would deny his complicity with the crime.

8.After going through the oral and documentary evidence adduced by the prosecution, the learned trial Judge has come to a conclusion that the charge levelled against the accused has been proved beyond any reasonable doubt and accordingly convicted and sentenced the accused to undergo one year rigorous imprisonment each under Section 7 and Section 13(1)(d) r/w 13(2) of the prevention of Corruption Act and further ordered that the sentence to runs concurrently. Aggrieved by the findings of the learned trial Judge, the accused has preferred this appeal.

9. Now the point for determination in this appeal is whether the conviction and sentence under Section 7 and Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act against the accused is liable to be set aside for the reasons stated in the memorandum of appeal?

10. Heard Mr. T.P.Manoharan, learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor appearing for the respondent and given due deliberation to the rival submissions made by them.

11. The Point:

The only point which has not been properly explained by the prosecution in this case is after handing over the decoy amount of Rs.125/-, the case of

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the prosecution is that P.W.1 has got back Rs.15/- from the accused to meet his expenses towards meals. It is admitted by the prosecution that no such instruction was given by P.W.9 to the Decoy witness P.W.1 at the time when sodium carbonate solution test as well as phenolphthalein test were explained to P.W.1 in the office of the Vigilance and Anti Corruption Department at Salem.

12. Yet another point to be noted is that the normal conduct of P.W1 after handing over the decoy amount of Rs.125/- to the accused. After the accused had received the decoy amount of Rs.125/- in the presence of P.W.2,P.W.1 and P.W.2 came out of the office of the Village Administrative Officer/accused had signalled to P.W.9 as instructed and thereafter according to the prosecution, P.W.1 was standing outside the office of the Village Administrative Officer which is quite unnatural and unbelievable.

13. According to the evidence of P.W.9, P.W.1 was standing outside the office of the accused from 3.25p.m. to 4.45p.m. There is no explanation given by the prosecution for what purpose P.W1 was waiting from 3.25p.m to 4.45p.m. After handing over the bribe amount. The purpose for which the decoy witness P.W.1 received back Rs.15/- from the accused is to meet his expenses for his diet. Already the time was 3.25p.m. It is in no way in evidence that after the test conducted and instructions given by P.W.9 at his office and before proceeding to the office of the accused/Village Administrative Officer, P.W.1 and P.W.2 had taken their lunch on the said day. So the natural conduct of P.W.1 should be after handing over the ill gotten amount and after getting solvency certificate from the accused, he would have gone to a hotel to take his meals from out of the amount of Rs.15/- received from the accused for the said purpose. Therefore, we could infer from the conduct of the witness in this case that P.W1 was standing outside the office of the accused from 3.25p.m. to 4.45p.m. Is only to hand over Rs 15/-, he got from the accused to P.W.9 to prepare Ex P7 mahazar. The episode of Rs 15/- received back from the accused by P.W.1 casts a cloud on the case of the prosecution and creates doubt in the mind of this court which certainly shall inure to the benefit of the accused. Under such circumstances , it cannot be said that the case of the prosecution has

been proved beyond any reasonable doubt. Under such circumstances, I hold on the point that the prosecution has failed to prove the guilt of the accused beyond any reasonable doubt to warrant conviction in this case. The finding of the learned trial Judge without considering this fact necessitates this Court to interfere with the findings of the learned trial judge. Point is answered accordingly.

14. In the result, the appeal is allowed and the conviction and sentence of the learned trial Judge under Section 7 and Section 13(1)(d) r/w13(2) of the Prevention of Corruption Act in C.C.No.222 of 1989 on the file of the learned Special Judge and I Additional District Judge-cum-Chief Judicial Magistrate, Salem is set aside and the accused is set at

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liberty forthwith. The bail bond against the accused stands cancelled. Consequently, Crl.M.P.No.1 of 2007 filed under Section 391 of Cr.P.C. is closed as unnecessary.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sg

To
1. The Special Judge and I Additional District Judge-cum-Chief Judicial Magistrate, Salem.

2.The Inspector of Police, Vigilance and Anti Corruption Special Cell, Salem.

3. The Public Prosecutor, High Court, Madras

+ 1 CC To Mr. T.P.Manoharan, Advocate SR NO.38367

Crl.A.No. 1213 of 2000

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Gp/4.5.

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